*** THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN**

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+ WRIT PETITION NO. 4346 OF 1998

% Dated 30-04-2007

K.H.A. Swamy

.... Petitioner

Vs.

$ The Depot Manager, APSRTC Bus Depot, Kukatpally, Hyderabad and another.

.... Respondents

! Counsel for the Petitioner: Mr. V. Narasimha Goud.

^ Counsel for the Respondents: Mr. V.T.M. Prasad

<GIST:

> HEAD NOTE:

? Cases referred

[1] 1995 SCC (L&S) 196
2 Judgment W.P. No. 15839 of 1997 dated 14.06.1996
3 2006 LAB. I.C. 2114
4 (2006) 5 SCC 446
5 2006(1) SCALE 691
6 1992 (4) SCC 711
7 1999(3) SCC 679
8 AIR 1964 SC 787
9 (1981) 2 SCC 714
10 (2004)8 SCC 200
11 (2005)7 SCC 764
12 (1997)2 SCC 699
13 (2001)1 ALD 180)
14 (2001)2 SCC 54
15 2006(5) SCC 173
16 AIR 1970 SC 645

[17] AIR 1957 SC 227
[18] (2003) 6 SCC 675
[19] (1994) 2 SCC 481

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THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO. 4346 OF 1998

ORDER:

Repeated proclamation of concern, and lofty statements of having taken adequate measures to ensure safe driving by its drivers, notwithstanding, the present case best illustrates the apathy and indifference of the A.P.S.R.T.C. to the plight of pedestrians.

For rash and negligent driving, which resulted in the death of a pedestrian on the accident spot, a criminal case was instituted and disciplinary proceedings held against the petitioner. While he was found guilty of misconduct in the departmental enquiry, and imposed the punishment of removal from service, he was acquitted in the criminal case. The challenge to the order of removal from service resulted in the Additional Industrial Tribunal-cum-Additional Labour Court, Hyderabad directing his reinstatement with continuity of service but without back wages. Curiously, the Respondent A.P. State Road Transport Corporation has permitted the Award of the Additional Industrial Tribunal-cum-Additional labour Court to attain finality and has not chosen to challenge it by way of a writ petition before this Court. It is the petitioner-workman who has approached this Court questioning the

said Award to the limited extent that he was denied back wages. Reference to the disciplinary proceedings, the order of the Criminal Court and the Award of the Additional Industrial Tribunal-cum-Additional Labour Court is necessary to show the inept handling of criminal cases by the prosecution and the casual manner in which industrial disputes are dealt with.

DISCIPLINARY PROCEEDINGS:

The petitioner, a driver at the R.T.C. bus depot, Kukatpally, Hyderabad, was charged of rash and negligent driving, lack of anticipation and failure to take precautionary measures to prevent the accident which resulted in the death of a pedestrian on the spot. The charges levelled against the petitioner were:

Charge No.1: "For your gross negligence while driving the vehicle No AAZ 9909 on 22.08.1992 with lack of anticipation and judgment, which has resulted spot death of a pedestrian, which constitutes misconduct in terms of Regulation 28(ix)(a) and (b) of APSRTC Employees (Conduct) Reg. 1963."

Charge No.2: "For having failed to take precautionary measures while operating bus No. AAZ 9909 on 22.08.1992 when you observed the pedestrian fallen from the vision mirror, which constitute misconduct in terms of Regulations 28(xxxii) of A.P.S.R.T.C. Employees Regulations 1963."

The petitioner's written explanation was called for and, not being satisfied therewith, a departmental enquiry was ordered. During the course of enquiry, the Assistant Manager (Traffic), Sri M. Satish Kumar, who was examined as a witness on behalf of the management, deposed that, on 22.08.1992, he had received a telephonic message from the depot at 22.00 hours informing him that bus No. AAZ 9909 had met with an accident at Lakdikapul resulting in the death of a pedestrian, that he had immediately rushed to the spot and found that the bus had been removed by the driver, from the scene of the accident, and was driven to the

Saifabad police station, and the dead body was sent to the hospital for postmortem examination by the Saifabad police station. Sri M. Satish Kumar deposed that, on enquiry, the driver had informed him that he did not know how the accident had occurred and that, when he heard passengers shouting about an accident, he had noticed from the side mirror of the bus that a pedestrian had fallen down at the rear wheel of the bus. In his statement the conductor of the bus Sri M. Bheemaiah stated that the driver had not stopped the bus at Lakdikapul stage, had taken it to Saifabad police station and, when he enquired why he had not stopped at Lakdikapul, the driver had informed him that an accident had taken place. The enquiry officer held that when bus No. AAZ 9909, which was operating from Khairatabad to Nampally, (proceeding towards Charminar), passed Nirankari bridge, the petitioner had taken the vehicle to the extreme right side of the bridge resulting in a pedestrian falling down, the bus rear wheel running over him and his death on the spot. When questioned, during the course of enquiry, the petitioner herein stated that he had already submitted his explanation to the charge memo and that the same be treated as his explanation to the first charge. He denied charge No.2 and submitted that he had never driven the bus in a negligent manner, with lack of anticipation and judgment, as alleged and, since road widening work was going on at the bridge, he had driven the bus slowly with utmost care and proper judgment and that he was not guilty of charge No.2. The enquiry officer held that a keen observation of the rough sketch, of the accident site of bus bearing No. AAZ 9909, revealed that the driver had taken the bus to the

extreme right leaving his left side and this might be because of two reasons either that he may have over taken some of the vehicles ahead of his bus or he may have taken a parallel line on a one way traffic, both of which were not warranted. The enquiry officer held that as the driver was passing through one way traffic, that too on a bridge where road widening work was in progress with several road obstacles, he should have driven the vehicle only after the vehicles on his left side and that, instead, he had taken the vehicle to the right, resulting in the accident. The enquiry officer noted that the petitioner himself had admitted that he had noticed, through the side vision mirror, that a pedestrian had fallen below the rear wheel of the bus and, instead of stopping the bus on the spot, he had driven the vehicle to the nearby police station. The enquiry officer held that the reasons put forth by the petitioner for such an act, that he was afraid that he may be assaulted and the vehicle may be damaged by the enraged mob, was not convincing and when he saw, from his side vision mirror, that a pedestrian had fallen down below the rear wheel of the bus if he had stopped the bus, then and there, the pedestrian may have escaped either with minor or major injuries but it would not have led to his spontaneous death. The enquiry officer held that charge No.1 was proved.

With regards the second charge the enquiry officer noted that the prosecution witness Sri M. Satish Kumar had stated that the petitioner had seen, from the side vision mirror of the bus, that a pedestrian had fallen below the rear wheel of the bus and that the conductor had also reiterated this fact in his statement. The

enquiry officer noted the statement of the petitioner, in his explanation, that he had not caused any accident, that the passengers travelling in his bus were far more than its capacity, that they had started shouting, perhaps on seeing that some person had fallen on the road, and, sensing this, he had taken the bus to the nearby Saifabad police station. The enquiry officer also noted the petitioner's statement that the pedestrian may have been knocked down by some other vehicle since there were no marks or blood stains on the tyres of the rear wheel of the bus. The enquiry officer found this statement not convincing as the petitioner had, himself, admitted that he had seen through the side vision mirror of the bus that a pedestrian had fallen down below the rear portion of the bus. The enquiry officer noted that the petitioner, on being questioned regarding the approximate speed of his vehicle, had informed that it was about 5 kms per hour as the incident had occurred during peak traffic movement hour, construction work was going on at the bridge, several road girders were placed on the side of the road, several labourers were breaking stones for laying the road and no vehicle, either heavy or light, could go beyond 5 to 10 kmph speed. The enquiry officer held that, if this was true, no pedestrian would suffer spontaneous and immediate death at such low speed. The enquiry officer noted that when questioned about what precautionary measures he had taken to avert the accident, and save a person's life on sighting a pedestrian falling below the rear portion of his bus, the petitioner had replied that only on hearing a loud noise from the passengers of his bus, had he seen through the vision mirror and noticed that

a pedestrian had fallen down below the rear portion of the bus and, if only he had observed this from the front mirror, he would have definitely taken precautionary measures to avert the accident and save the life. He further stated that, as the accident had occurred in the rear portion of the bus, he was not responsible. The enquiry officer held that the petitioner had not taken precautionary measures either before or after noticing from the side vision mirror that a pedestrian had fallen down below the rear portion of the bus even though the passengers in the bus had shouted that an accident had occurred. The enquiry officer held the petitioner responsible for commission of the offence.

The petitioner was issued notice dated 28.01.1993 asking him to show cause why the proposed punishment of removal from service should not be imposed on him. In the said show cause notice the disciplinary authority held that, after observing that a pedestrians had fallen down, the petitioner should have stopped the bus, applying sudden break, instead of which he had driven the vehicle to Saifabad police station. The disciplinary authority held that, if the petitioner had stopped the bus, the pedestrian may have sustained minor or even major injuries but the fatal accident could have been averted. After going through the entire case, the joint accident committee report, the sketch of the accident spot and the enquiry officer's findings, the disciplinary authority held the petitioner guilty of the first charge. On the second charge, the disciplinary authority held that the petitioner did not take any precautionary measures and if he had done so, on noticing that a pedestrian had fallen down from the bus, the fatal accident could

have been averted. On receipt of the petitioner's explanation the disciplinary authority, vide proceedings dated 24.02.1993, came to the conclusion that the proposed punishment of removal from service was the fit and proper punishment to be imposed on the petitioner and ordered that he be removed from service with immediate effect and the suspension period be treated as not on duty.

Aggrieved thereby, the petitioner approached the Additional Industrial Tribunal-cum- Additional Labour Court, Hyderabad in I.D. No. 24 of 1996.

CRIMINAL PROCEEDINGS:

Based on a complaint filed by the head constable of Saifabad police station that, while he was on patrol duty along with another constable, he saw an RTC bus, bearing No. AAZ 9909 belonging to Kukatpally bus depot, coming from Khairatabad being driven in a rash and negligent manner and, on reaching Shyam Talkies, Lakdikapul, it had dashed against a pedestrian who fell down on the road and died on the spot. The complainant stated that he had shifted the deceased to Osmania General Hospital and, thereafter, had lodged a complaint in Saifabad police station. During the course of investigation witnesses were examined and their statements recorded. A panchanama was conducted at the scene of the offence and a sketch was drawn thereof. Since the deceased was unknown, information was conveyed to all newspapers after which the wife of the deceased, and his relatives, came and identified the deceased as Khasim Ali, S/o Mastan Sahab, aged 45 years. On behalf of the prosecution,

P.Ws-1 to 9 were examined and Exs.P-1 to P-6 were marked.

The XV Metropolitan Magistrate, Hyderabad, in C.C. No. 40 of 1993 dated 10.04.1995, noted that, in order to establish that the accused had caused the death of the deceased, the prosecution had placed reliance on the oral evidence of P.Ws-1 and 8, who were direct eye witnesses, and that the other witnesses P.Ws- 2 to 5 had only identified the deceased as the person involved in the accident, that P.W-6 was the panch witness for the inquest panchanama, that P.W-7 was the doctor who conducted the autopsy over the dead body of the deceased and had furnished the postmortem examination report and that P.W-9 was the investigating Officer. The Criminal Court noted the evidence of P.W-1 that on 22.08.1992, while he was on patrol duty along with another constable, at about 6.30 p.m bus bearing No. 9909, while coming from Khairatabad, had dashed against a person in front of Shyam talkies when the person was crossing the road from Shyam Talkies to Nirankari building, that the bus ran over his right side thigh resulting in his death on the spot, that he, and another constable, had taken the dead body of the deceased to Osmania General Hospital and that he saw the driver of the bus and identified him as the accused. During cross-examination P.W-1 deposed that he did not actually witness the incident and, by the time he reached the spot, public had gathered there. He admitted that he did not state, in Ex.P-1, that he saw the driver of the RTC bus and had identified him. He also deposed that he did not state whether the front tyre or back tyre of the bus had run over the deceased, that he did not see when the bus actually ran over the

deceased and that he found the dead body of the deceased on the back side tyre of the bus. P.W-8, an Auto driver, deposed that, while he was waiting for passengers, an RTC bus came from Khairatabad at great speed and hit a pedestrian who came under the wheels of the bus and that the bus driver got down and ran away. In his cross-examination, P.W-8 admitted that the road at Lakdikapul was under repair at the time of the accident, that construction material and stones were lying on the road, that all vehicles, including buses, cars, cycles and pedestrians, used to come only in one way and that the accident occurred on the road towards Nirankari nagar on the right side of the road. He also admitted that he could not say where the deceased received injuries or what clothes he wore. The learned Judge held that P.W-1 did not actually witness the accident and was not definite as to the person who drove the bus. The Trial Judge noted that P.W-8 was also a witness to Ex.P-4, a sketch of the scene of offence, according to which the accident had occurred on the road towards post office side. The Trial Judge held that the evidence of P.W-8 was not definite as to the person who drove the bus, that none of the eye witnesses P.Ws-1, 8 and 9 were definite about the involvement of the accused in the crime and that no other evidence was placed to show that the accused was the driver of the bus involved in the accident. The learned XV Metropolitan Magistrate also noted the evidence of P.W-7, the doctor, that the injuries could not have occurred when a vehicle ran over the person and that the prosecution had failed to prove the nexus between the accused and the accident. The petitioner was

acquitted of the charge of having committed an offence under Section 304-A IPC, was set at liberty and his bail bonds cancelled.

It is necessary to note that the evidence in the disciplinary enquiry is not the same as in the Criminal Case. While in the Criminal Case the driver, who drove the bus bearing No. AAZ 9909 on the fateful day, was not identified, in the disciplinary enquiry the petitioner himself admitted that he was the driver of the bus and that, from his side vision mirror, he had seen a pedestrian fall down on the rear side of the bus. That the petitioner was acquitted in the criminal case, on the ground that he was not identified as the driver of the bus involved in the accident, is a sad reflection of the manner in which Criminal Cases are being prosecuted.

AWARD OF THE ADDITIONAL INDUSTRIAL TRIBUNAL-CUM-ADDITIONAL LABOUR COURT:

The Additional Industrial Tribunal-cum-labour Court, in its order in I.D.No.24 of 1996 dated 27.09.1996, upheld the validity of the domestic enquiry. The Additional Industrial Tribunal was required, thereafter, to exercise its jurisdiction under Section 11-A, re-appreciate the evidence on record and determine whether the punishment imposed on the petitioner was proportionate to the charge held established and, if it was not, to decide on the nature and extent of punishment to be imposed. The Additional Industrial Tribunal, in its Award in I.D. No. 24 of 1996 dated 16.10.1996, noted that, in his appeal filed before the Senior Manager, Operations, the petitioner had informed that he was acquitted in the Criminal Case of the charge of rash and negligent driving, that

the charges in the disciplinary proceedings and in the Criminal Case were one and the same and that the judgment rendered in the Criminal Case should have been considered for evaluating the disciplinary proceedings. The Tribunal held that, though the petitioner in his appeal had stated that the enquiry report showed that the deceased pedestrian must have touched the rear side body of the bus, the fact that there was road widening work under progress and the road was very congested was not given due weight by the appellate authority who simply held that the petitioner should have stopped the bus. The Tribunal held that the material on record showed that the driver had stopped the bus immediately after observing the pedestrian from the side mirror and it could not, therefore, be held that the petitioner had not taken precautionary measures to avert the accident. The Tribunal held that the vehicle could not be driven at high speed in view of the congested busy road and as road widening work was in progress. The Tribunal also noted that the judgment rendered by the Criminal Court revealed that injuries were not possible on a bus running over a person and that an inference could be drawn that the driver was not at fault. The Tribunal noted that the two eye witnesses in the Criminal Case had stated that the accident spot was under repair, it was filled with construction material, that both of them did not actually witness the accident and they were not certain as to the person who drove the bus. The Tribunal observed that the identity of the accused was in dispute after full trial in the Criminal Case wherein it was held that the prosecution had failed to prove the guilt of the accused for the offence under Section 304-A IPC.

The Tribunal noted that the accused was found not guilty of the offence and was acquitted after a detailed trial on the merits of the case. The Tribunal, after referring to the judgment of the Supreme Court in **Sulekhchand and Salekhchand Vs. Commissioner of Police**[1] and the order of this Court in **C. Chenna Reddy Vs. A.P.S.R.T.C**[2], noted the statement of the bus conductor that the bus was running at a speed of 5 to 10 kms per hour and found sufficient legal force in the arguments of the learned Counsel for the petitioner that, since the Criminal Case had ended in an acquittal on merits, and the petitioner was held not guilty of the charge, the departmental proceedings should have been dropped. The Tribunal held that the petitioner was entitled for reinstatement with continuity of service but without back wages and that withholding of back wages was adequate punishment in the facts and circumstances of the case. An Award was accordingly passed directing the respondent to reinstate the petitioner with continuity of service but without back wages.

It is necessary to note that while 14 documents were marked as exhibits on behalf of the respondent, including the accident sketch as Ex.M-1, the evidence of Sri M. Satish Kumar, Assistant Manager (Traffic) as Ex.M-8 and the findings of the enquiry officer as Ex.M-11, the Tribunal ignored the evidence adduced in the departmental enquiry that the petitioner was the driver of the bus and that, on hearing a commotion from the passengers of the bus, he noticed, from the side vision mirror, that a person had fallen on the rear side of the bus. It is also necessary, in this context, to note that while the doctor, who was

examined in the Criminal Case, had deposed that the death of the deceased could not have been caused by the bus running over him, the cause of the death of the deceased, and whether such death could have occurred on his being hit by the bus and falling down below the rear wheel, were among the several questions which, remained unexamined and unanswered.

Sri V. Narasimha Goud, learned Counsel for the petitioner, would fairly concede that the order, of the Additional Industrial Tribunal-cum-Additional labour Court, dated 27.09.1996, upholding the validity of the domestic enquiry, is not under challenge in the present writ petition. Learned Counsel would submit that the only question which necessitates examination in this writ petition is whether the Tribunal could have denied back wages without assigning reasons therefor. Learned Counsel would contend that, since the Criminal Court had acquitted the petitioner on merits, the findings in the Criminal Case are binding in disciplinary enquiry proceedings and, as the petitioner had brought this fact of his having been acquitted in the Criminal Case to the notice of the appellate authority, the disciplinary proceedings should have ended in his favour and he should have been reinstated with full back wages. Learned Counsel would rely on **Narinder Mohan Arya Vs. United India Insurance Co. Ltd**[3], **G.M. Tank Vs. State of Gujarat**[4], and **U.P. State Road Transport Corporation Vs. Shivaji**[5]. Learned Counsel would contend that, since the Tribunal has not assigned any reasons for denying back wages to the petitioner, this Court should either mould the relief and grant

back wages to the petitioner or remand the matter back to the Labour Court to examine only this question of denial of back wages and that, in a writ petition filed by the petitioner-workman challenging the Award of the Addl. Industrial Tribunal-cum-Addl Labour Court, and as the respondent A.P.S.R.T.C has permitted the said Award to attain finality, this Court should not quash the Award in its entirety, for that would result in a situation where, even in the absence of a challenge to the Award by the respondent–Corporation, the Award, on its now being set aside and remanded, may well be examined by the Addl. Industrial Tribunal-cum-Addl. Labour Court in its entirety including whether the petitioner was or was not guilty of the charge.

On the question whether acquittal in a criminal case would, by itself, and without anything more, require the Industrial Tribunal/Labour Court to set aside the punishment imposed in a disciplinary enquiry, the Tribunal placed reliance on **Sulekh Chand**[1] and **C. Chenna Reddy**[2]. In **Sulekh Chand**[1], a two judge bench of the Supreme Court observed:-

"……..We have perused the proceedings of D.P.C. which would clearly show that the reasons which prevailed with the D.P.C. were the prosecution under section 5(2) of Prevention of Corruption Act and the departmental enquiry, against the appellant. **It is not in dispute that the proposed departmental enquiry also is related to the self same offence under section 5(2) of the prevention of Corruption Act. The judgment acquitting the appellant of the charge under section 5(2) became final and it clearly indicates that it was on merits. Therefore, once the acquittal was on merits the necessary consequence would be that the delinquent is entitled to reinstatement as if there is no blot on his service and the need for the departmental enquiry is obviated. It is settled law that though the delinquent official may get an acquittal on technical grounds, the authorities are entitled to conduct departmental enquiry on the self same allegations and take appropriate disciplinary action. But, here, as stated earlier, the acquittal was on merits. The material on the basis of which his promotion was denied was the sole**

ground of prosecution under section 5(2) and that ground when did not subsist, the same would not furnish the basis for DPC to overlook his promotion. We are informed that the departmental enquiry itself was dropped by the respondents. Under these circumstances, the very foundation on which the D.P.C. had proceeded is clearly illegal…… (emphasis supplied).

In **C. Chenna Reddy[2]**, this Court held:

"……. This writ petition has been filed questioning the order of the 3rd respondent in imposing conditions like treating the period from the date of removal to the date of reinstatement as 'not on duty', thus foregoing salary, leave, increment, gratuity, seniority and suffering the minimum scale as also foregoing annual increment etc. The petitioner was charged for his alleged rash and negligent driving resulting in the death of a girl aged 15 years. Certainly, it is sad thing that a girl of tender age in her teens having a lot of life ahead of her, was killed in the accident. But, who was caused the accident is the question for consideration. If there was no fault on the part of the petitioner, then he cannot be mulcted with the liability. It ;is not a case where due to rash and negligent driving at high and uncontrollable speed that the petitioner had dashed against the girl when she was coming in opposite direction or going in the same direction. But, it is a case where the girl wanted to be a passenger in the bus which the petitioner was driving at that time and that there was heavy rush and because of the slip, the girl fell down under the wheels from the foot-board and then died. The petitioner was prosecuted under Section 304-A IPC was convicted and sentenced to pay a fine of Rs.600/- on appeal to the Court of Sessions, the same was set aside holding that the petitioner was not guilty of the offence. It is not disputedl that the said judgment had become final. If that be so, no negligence can be attributed to the petitioner and it was in those sad circumstances mentioned above that the teen-aged girl died.

Learned Standing Counsel for APSRTC vehemently contends that it was incumbent upon the petitioner to control the passengers. I do not accede to this contention for the reason that the petitioner is a driver entrusted with the task of driving and the passengers are to be controlled by the conductor and the learned counsel for APSRTC admits that no disciplinary action has been taken against the conductor. If that be so, it is ununderstandable as to how the petitioner can be made liable for the slip among the passengers.

This Court is not posted with the facts as to whether the parents of the deceased teen-aged have been compensated or not. But, that is a question apart in this writ petition as in this writ petition it is livelihood of the petitioner because of the imposition of conditions which falls for consideration. As I am of the considered view that the petitioner was not at

fault, the conditions imposed by the 3rd respondent as also the 2nd respondent are set aside. The petitioner shall be treated as having been reinstated unconditionally with all the attendant benefits thereto……"

A three Judge Bench of the Supreme Court in **Nelson Motis Vs. Union of India**[6] observed:

"……..**So far the first point is concerned, namely whether the disciplinary proceedings could have been continued in the face of the acquittal of the appellant in the criminal case, the plea has no substance whatsoever and does not merit a detailed consideration. The nature and scope of a criminal case are very different from those of a departmental disciplinary proceeding and an order of acquittal, therefore, cannot conclude the departmental proceeding.** Besides, the Tribunal has pointed out that the acts which led to the initiation of the departmental disciplinary proceeding were not exactly the same which were the subject matter of the criminal case……" (emphasis supplied).

In **Captain M. Paul Anthony Vs. Bharat Gold Mines Ltd**[7], the Supreme Court, taking note of its earlier judgments, summarized its conclusions thus:-

"……..The conclusions which are deducible from various decisions of this Court referred to above are:

(i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.

(ii) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.

(iii) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and

material collected against him during investigation or as reflected in the charge-sheet.

(iv) The factors mentioned at (*ii*) and (*iii*) above cannot be considered in isolation to stay the departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.

(v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, the administration may get rid of him at the earliest…..

……**There is yet another reason for discarding the whole of the case of the respondents. As pointed out earlier, the criminal case as also the departmental proceedings were based on identical set of facts, namely, the raid conducted at the appellants residence and recovery of incriminating articles therefrom. The findings recorded by the enquiry officer, a copy of which has been placed before us, indicate that the charges framed against the appellant were sought to be proved by police officers and panch witnesses, who had raided the house of the appellant and had effected recovery. They were the only witnesses examined by the enquiry officer and the enquiry officer, relying upon their statements, came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case but the Court, on a consideration of the entire evidence, came to the conclusion that no search was conducted nor was any recovery made from the residence of the appellant. The whole case of the prosecution was thrown out and the appellant was acquitted. In this situation, therefore, where the appellant is acquitted by a judicial pronouncement with the finding that the raid and recovery at the residence of the appellant were not proved, it would be unjust, unfair and rather oppressive to allow the findings recorded at the ex parte departmental proceedings to stand**……

…….**Since the facts and the evidence in both the proceedings, namely, the departmental proceedings and the criminal case were the same without there being any iota of difference, the distinction, which is usually drawn as between the departmental proceedings and the criminal case on the basis of approach and burden of proof, would not be applicable to the instant case**……..(emphasis supplied)

It is only when the departmental proceedings and the Criminal Case are based on identical set of facts, and the evidence adduced in both the proceedings are the same, would the delinquent employee's acquittal in the Criminal Case justify the punishment imposed, pursuant to a departmental enquiry, being set aside.

Now the judgment relied upon by the petitioner.

In **Shivaji**[5], the driver of a UPSRTC bus dashed against a barrier installed at Sasani bus stand resulting in injuries to the passengers. On his being held guilty of misconduct, in a departmental enquiry, the driver of the bus was removed from service. The Labour Court held that the driver was guilty of misconduct and that his termination was legal and valid. The High Court set aside the award holding that it was a case of no evidence, that on the touch-stone of reasonableness and fairness no reasonable or prudent man would construe the case to be a case of misconduct and that the punishment imposed was shockingly disproportionate to the charge of not stopping the bus at the barrier causing injuries to the passengers. In appeal the Supreme Court observed that the High Court was incorrect in opining that there was no evidence to prove the charge levelled against the driver. Thereafter, the Supreme Court observed:

> ".....The offence to cause any intentional injury, thus, cannot be said to have been proved. The High Court, did not assign any reason as to how the charges could be said to have been proved. He had not taken in to consideration his power under Section 11-A of the Act in regard to quantum of punishment. Why he had opined that the workman was guilty of serious misconduct and had no right to remain in service has not been explained.
>
> The matter in ordinary course should have been remitted to the Labour Court for passing an appropriate award, but keeping in view the fact that the matter is pending for a long time, we ourselves considered the

evidence on records.

We, therefore, are of the opinion that the impugned judgment cannot be faulted in its entirety. The High Court has granted reinstatement of Respondent with only 50% back wages. The said order has been stayed by this Court. Respondent was out of service for a long time. He, as noticed hereinbefore, even during the pendency of the domestic inquiry had been kept under suspension. He, however, was driving rashly and negligently.

In a case of this nature, doctrine of proportionality would also be applicable. Doctrine of irrationality is now giving way to doctrine of proportionality. (Commissioner of Police Vs. Syed Hussain: (2006) 3 SCC 173). The Labour Court also did not consider this aspect of the mater. If only a charge of negligence had been proved against him, we are of the opinion that the interest of justice would be subserved if he is directed to be reinstated in service with 25% back wages……"

In **Narinder Mohan Arya**[3], the Supreme Court observed that, under certain circumstances, a decision of a Civil Court was also binding on the Criminal Court although the converse was not true. While taking note of its earlier judgment in **Capt. M. Paul Anthony**[7], the Supreme Court clarified that it may not be understood to have laid down that, in all circumstances, the decision of the Civil Court or the Criminal Court would be binding on the disciplinary authority as the Supreme Court, in a large number of decisions, had pointed out that the same would depend upon other factors as well and that each case was, therefore, required to be considered on its own facts.

In **G.M. Tank**[4], the charge levelled against the appellant therein was that he had movable and immovable properties disproportionate to his known sources of income. A criminal case was instituted alleging that he had accumulated excess wealth by way of illegal gratification. The Supreme Court noted that disciplinary proceedings were initiated against the appellant for charges, punishable under the provisions of Prevention of

Corruption Act, which were based on the same set of facts and evidence as in the Criminal Case. The Supreme Court observed that both the departmental proceedings and the Criminal Case were based on identical and similar (verbatim) set of facts and evidence and that the appellant had been honourably acquitted by the competent Criminal Court on the same set of facts, evidence and witnesses and, therefore, the dismissal order passed on the same set of facts and evidence on the departmental side was liable to be set aside. Thereafter, on scanning through its earlier judgments in **Capt. M. Paul Anthony**[7], **R.P. Kapur Vs. Union of India**[8], **Corpn. of the City of Nagpur Vs. Ramchandra**[9], **Krishnakali Tea Estate Vs. Akhil Bharatiya Chah MazdoorSangh**[10], **Ajit Kumar Nag Vs. G.M. (PJ), Indian Oil Corpn. Ltd**[11], **Depot Manager, A.P.SRTC Vs. Mohd. Yousuf Miya**[12], the Supreme Court observed:

"…..The judgments relied on by the learned counsel appearing for the respondents are distinguishable on facts and on law. **In this case, the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in a departmental case against the appellant and the charge before the Criminal Court are one and the same. It is true that the nature of charge in the departmental proceedings and in the criminal case is grave. The nature of the case launched against the appellant on the basis of evidence and material collected against him during enquiry and investigation and as reflected in the charge sheet and factors mentioned are one and the same. In other words, charges, evidence, witnesses and circumstances are one and the same. In the present case, criminal and departmental proceedings have already been noticed or granted on the same set of facts namely, raid conducted at the appellant's residence, recovery of articles therefrom. The investigating Officer, Mr. V. B. Raval and other departmental witnesses were the only witnesses examined by the Enquiry officer who by relying upon their statement came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case and the criminal**

court on the examination came to the conclusion that the prosecution has not proved the guilt alleged against the appellant beyond any reasonable doubt and acquitted the appellant by his judicial pronouncement with the finding that the charge has not been proved. It is also to be noticed the judicial pronouncement was made after a regular trial and on hot contest. Under these circumstances, it would. be unjust and unfair and rather oppressive to allow the findings recorded in the departmental proceedings to stand.

In our opinion, such facts and evidence in the department as well as criminal proceedings being the same without there being any iota of difference; the appellant should succeed. The distinction which is usually proved between the departmental and criminal proceedings on the basis of the approach and burden of proof would not be applicable in the instant case. Though finding recorded in the domestic enquiry was found to be valid by the courts below, when there was an honourable acquittal of the employee during the pendency of the proceedings challenging the dismissal, the same requires to be taken note of and the decision in Paul Anthony's case (supra) will apply. We, therefore, hold that the appeal filed by the appellant deserves to be allowed...." (emphasis supplied)

Unlike in **Narinder Mohan Arya**[3], and **G.M.Tank**[4], in the case on hand the evidence adduced in the departmental enquiry, and in the criminal case, is not identical. Sri M. Satish Kumar, the Assistant Manager (Traffic), and the management witness in the departmental enquiry, was not examined in the Criminal Case. In the Criminal Case, the identity of the driver of the bus involved in the accident was itself doubted whereas in the departmental enquiry, the petitioner himself admitted and acknowledged that he was the driver of the bus involved in the accident. While the charge in the departmental enquiry and in the Criminal Case may be similar, the evidence let in was not identical and consequently the petitioner's acquittal in the criminal case would not automatically necessitate the punishment imposed in the departmental enquiry being set aside.

Acquittal of the delinquent employee, in a criminal case can,

at best, be a factor to be taken into consideration by the Labour Court while exercising jurisdiction under Section 11-A of the Industrial Disputes Act. In this context it is useful to refer to the judgment of this Court in **Sk. Ahmed Vs. Labour Court**[13] wherein B.Sudershan Reddy, J (as he then was), observed:

"……..It may be true that acquittal of an employee of the charges in a criminal case may have some bearing in considering the proportionality of punishment by the Labour Court in exercise of its jurisdiction under Section 11-A of the Act. But the judgment of the Criminal Court cannot be held to be conclusive. **The Labour Court is not bound by the judgment of the Criminal Court. The Labour Court is not bound to direct the reinstatement of an employee into service on the sole ground of employee's acquittal even on merits in the criminal case. It may be one of the factors to be taken into consideration inn awarding appropriate punishment in exercise of its jurisdiction under Section 11-A of the Act. The same principle would apply to proceedings before the disciplinary authorities……..." (emphasis supplied)**

The contention of Sri V. Narasimha Goud, learned counsel for the petitioner, that acquittal in the Criminal Case, would necessitate the disciplinary proceedings held against the petitioner being quashed must, therefore, be rejected.

The finding of the Industrial Tribunal, that the petitioner had taken precautionary measures to avert the accident by stopping the bus, is perverse and is based on no evidence. The evidence on record would establish that the petitioner had not stopped the bus at the accident spot and had, instead, taken the bus to Saidabad Police Station apprehending that, on seeing the accident, he may be assaulted and the vehicle damaged by the irate mob. The Tribunal has not even considered or analysed the evidence on record to determine whether the charges levelled against the petitioner were established or not. Without recording a clear

finding on the question whether the charges levelled against the petitioner were established or not, the Labour Court held that withholding of back wages would be adequate punishment in the circumstances of the case.

In exercise of its jurisdiction, under Section 11-A of the Industrial Disputes Act, the Labour Court is firstly required to re-appreciate the evidence on record to determine whether the charges levelled against the delinquent employee are established or not. It is only after coming to the conclusion that the charges are established is the Tribunal required to examine whether the punishment imposed for proved acts of misconduct is justified or not. While examining the quantum of punishment the Labour Court is required to bear in mind that the nature and extent of punishment to be imposed for proved acts of misconduct is, ordinarily, in the employer's realm and it is only when the Labour Court finds that the punishment is grossly disproportionate would it be justified in interference. The Labour Court ought not to interfere with the punishment imposed on a delinquent employee, by his employer, as a matter of course or on sympathetic considerations. While the Labour Court, undoubtedly, has the discretion to interfere with the quantum of punishment, it is required to assign reasons in justification of the punishment which it considers appropriate.

It is no doubt true that, in cases where the Tribunal/Labour Court comes to the conclusion that the charges levelled against a delinquent employee are not established, it must record reasons for denial of back wages. It must, however, not be lost sight of

that grant of back wages, or the extent to which back wages should be granted, are matters of discretion of the Tribunal/Labour Court in exercise of its jurisdiction under Section 11-A of the Industrial Disputes Act. Payment of back wages having a discretionary element involved in it has to be dealt with in the facts and circumstances of each case and no straight-jacket formula can be evolved, though, however, there is statutory sanction to direct payment of back wages in its entirety. (**P.G.I. of Medical Education & Search, Chandigarh Vs. Raj Kumar**[14]). Relief to be granted in terms of Section 11-A of the Industrial Disputes Act being discretionary in nature, the Labour Court is required to consider the facts of each case therefor. Only because relief by way of reinstatement with full back wages would be lawful, it would not mean that the same would be granted automatically. (**Municipal Council, Sujanpur Vs. Surinder Kumar**[15]). In the present case, the Tribunal has denied back wages as a measure of punishment. I see no reason to interfere with the discretion exercised by the Tribunal since the Award of the Tribunal, denying back wages, cannot be said to have resulted in manifest injustice.

While the Award of the Industrial Tribunal leaves much to be desired, this Court is faced with a piquant situation where the Award has not been challenged by the A.P.S.R.T.C, even in a case where the accident has resulted in the death of a pedestrian. If such matters are not given serious consideration the obvious and only conclusion which can be drawn therefrom is of apathy and indifference of the A.P.S.R.T.C. to the plight of pedestrians

and that its avowed attempts, to rein in its drivers from rash and negligent driving, are but statements made for public consumption.

In the absence of any challenge to the Award by the respondent–corporation, would this Court be justified in quashing the award in its entirety, in a writ petition filed by workman limiting the challenge to the Award only to denial of back wages? This Court may, ordinarily, not be justified in doing so. If, on the other hand, the contention of the petitioner–workman were to be accepted, and the workman held entitled to be paid back wages on the sole ground that the Tribunal has not assigned reasons for denial thereof, this Court would be turning a blind eye to a ghastly accident and be rewarding a driver for his rash and negligent driving which resulted in the death of a pedestrian. Should this Court, in such a fact situation, exercise its discretionary jurisdiction under Article 226 of the Constitution of India to interfere?

A writ of certiorari is discretionary and is not issued merely because it is lawful to do so. (**Champalal Binani Vs. The Commissioner of Income-tax, West Bengal**[16]). Proceedings by way of certiorari are "not of course". The High Court has the power to refuse the writ if it is satisfied that there was no failure of justice. (**A.M. Allison Vs. B.L. Sen**[17]). A writ of certiorari is not available to correct mere errors of fact or of law unless grave injustice or gross failure of justice has occasioned thereby. The power to issue a writ of certiorari is to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest it occasion grave injustice. (**Surya**

Dev Rai Vs. Ram Chander Rai[18]). Exercise of jurisdiction under Article 226 of the Constitution of India should be for the sake of justice. If quashing of the order results in greater harm then the court may refrain from exercising the power. (**State of Maharashtra Vs. Prabhu**[19]).

Denial of back wages, in the facts and circumstances of the present case, cannot be said to have occasioned failure of justice. Since the power to issue a writ of certiorari is to be exercised sparingly, and only in appropriate cases where the judicial conscience of the High Court dictates it to act, I see no reason to exercise discretion and interfere with the Award, of the Additional Industrial Tribunal-cum-Additional labour Court, in I.D. No. 24 of 1996 dated 16.10.1996. The writ petition fails and is accordingly dismissed. However, in the circumstances, without costs.

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Date: .04.2007 RAMESH RANGANATHAN, J

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[1] 1995 SCC (L&S) 196

[2] Judgment W.P. No. 15839 of 1997 dated 14.06.1996

[3] 2006 LAB. I.C. 2114

[4] (2006) 5 SCC 446

[5] 2006(1) SCALE 691

[6] 1992 (4) SCC 711

[7] 1999(3) SCC 679

[8] AIR 1964 SC 787

[9] (1981) 2 SCC 714

[10] (2004)8 SCC 200

[11] (2005)7 SCC 764

[12] (1997)2 SCC 699

[13] (2001)1 ALD 180)

[14] (2001)2 SCC 54

[15] 2006(5) SCC 173

[16] AIR 1970 SC 645

[17] AIR 1957 SC 227

[18] (2003) 6 SCC 675

[19] (1994) 2 SCC 481